

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DWAYNE CARTER,

Petitioner,

Case No. 04-71762

v.

Hon. John Corbett O'Meara

BLAINE LAFLER,

Respondent.

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**ORDER DENYING MOTION FOR CERTIFICATE  
OF APPEALABILITY AND MOTION TO PROCEED *IN FORMA PAUPERIS***

Before the court is Petitioner's motion for certificate of appealability and application to proceed *in forma pauperis*, both filed on August 6, 2007. On July 11, 2007, the court adopted Magistrate Judge Pepe's report and recommendation and denied Petitioner's request for relief pursuant to 28 U.S.C. § 2254. Petitioner filed a notice of appeal with respect to that order and judgment on August 6, 2007.

In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. 2253(c). If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue.

Fed. R. App. P. 22(b). The court may issue a certificate of appealability if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

[T]he petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that the court could resolve the issues [in a different manner] or that the questions are "adequate to deserve encouragement to proceed further."

Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983); Hence v. Smith, 49 F. Supp. 2d 547, 549 (E.D.

Mich. 1999).

The court finds that Petitioner has not made a substantial showing of the denial of a constitutional right. The issues raised in the petition are not debatable among jurists of reason, such that they could be resolved differently, and they are not “adequate to deserve encouragement to proceed further.” Id. Accordingly, the request for a certificate of appealability is DENIED.

Based upon Petitioner’s application, the court will also consider whether to grant Petitioner *in forma pauperis* status on appeal. A court may grant *in forma pauperis* status if the court finds that an appeal is being taken in good faith. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24 (a); Foster v. Ludwick, 208 F. Supp. 2d 750, 765 (E.D. Mich. 2002). Good faith requires a showing that the issues raised are not frivolous. Id. In the present case, the court will deny petitioner leave to appeal *in forma pauperis*, because the appeal would be frivolous. See Allen v. Stovall, 156 F. Supp. 2d 791, 798 (E.D. Mich. 2001).

SO ORDERED.

s/John Corbett O’Meara  
United States District Judge

Dated: August 17, 2007

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, August 17, 2007, by electronic and/or ordinary mail.

s/William Barkholz  
Case Manager